

# Disability Perceptions, the Law and the Protection of the Disabled: The Case of Zambia

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**Abstract:** The protection of persons with disability (PWDs) is crucial in any society because they deserve the same amount of dignity and respect as persons without disability. Most abuse and discrimination that is leveled against PWDs emanate from negative perceptions towards this demographic. This paper posits that the legal system of any jurisdiction is under obligation to provide the much needed protection for PWDs. Using hermeneutics as the chosen method of analysis, this paper dissects the legal provisions for Zambia for purposes of gaining an understanding of the extent to which the provisions of the law and the adjudications of the courts have provided protection against negative perceptions, discrimination and abuse towards PWDs. Further, using observations and introspections by the authors based on experiences, being brought up and domiciled within the polity in reference, it is concluded in this paper that the protection of PWDs is still under threat as the legal system has not done much to protect this demographic thus far. This paper further intimates that the high prevalence of poverty in Africa, Zambia inclusive, compromises the potential for the legal system to mitigate the prevalence of negative perceptions towards and discrimination against PWDs. In most instances, inability to pursue litigation against perpetrators of discrimination and abuse due to poverty levels compromises opportunities to contribute to the building of a country and society that respects the rights of PWDs. The conclusion to this paper is that not much has been done within the legal framework and systems of Zambia to provide for the protection of the PWDs' rights and privileges.

**Keywords:** Disability, persons with disability, disability protection, law, legal framework, perception.

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## I. INTRODUCTION

The *World Report on Disability* defines disability as any impairments, activity limitations, and participation restrictions that the disabled person endures (World Health Organisation [WHO], 2011). Impairment according to the *Free Online Medical Dictionary* refers to any abnormality of, partial or complete loss of, or loss of the function of, a body part, organ, or system. The impairments may be due directly or indirectly to pathology or injury and may be either temporary or permanent.

Disability is not just a physiological problem. Rather it is a multifarious phenomenon, whose challenges manifest themselves in the complexities of the interaction between the disabled person's body features and the social-cultural attributes of the society in which he or she lives, according to the World Health Organisation *World Report on Disability*. The disabled person encounters challenges daily. Overcoming the difficulties faced by disabled persons requires interventions that modify the physical as well as the social-cultural environment.

Barnett and Casper (2001, p. 465) define the social-cultural environment as the immediate physical and social setting in which people live or in which something happens. The social-cultural environment also involves the idiosyncracies relating to the beliefs, attitudes, values and perceptions of people in a particular community or society towards various incitements.

This paper seeks to access the extent to which the Zambian legal framework provides protection to persons with disability (PWD) against negative perceptions within the confines of the socio-cultural environment of Zambia that often leads discrimination and abuse of this demographic. The assessment is carried using hermeneutic approaches to evaluate and interpret the legal framework of Zambia relating to disability. Furthermore, secondary data is analysed triangulated by observations and introspection regarding the prevailing perceptions towards PWDs in Zambia.

The paper starts by discussing the general perceptions prevailing towards PWDs around the world in general and in Zambia in particular. The discussion, then, scrutinizes the provisions of Zambian legal framework relating to disability and the protection of PWDs and concludes with a position as to the extent to which the law protects this demographic against abuse and discrimination emanating from negative perceptions.

## II. PERCEPTIONS TOWARDS DISABILITY

The *World Report on Disability* estimates that around 15 per cent of the world's population, roughly One billion people, live with some form of different disability. Morris (1991) states that PWDs form about the world's largest minority. Morris further asserts that the world statistics have been increasing with the exponential world population growth around the world made possible by advancements in medical intervention that prolong human life generally.

PWDs face numerous challenges. Fiasorgbor and Ayagiyire (2015, pp. 177-182) state that the challenges facing PWDs are varied and could be in the form of violation of human rights, poverty, stigma, discrimination and exclusion. Negative perceptions from within the societies where PWDs live form one of the most common challenge this demographic faces. Negative perceptions towards disability are evident universally and are as widespread around the world as they are in Africa.

Perceptions towards disability differ significantly from one community to another (Munyi, 2012). Literature on disability history has remained scanty thereby posing a grave challenge to students of disability studies attempting to trace the evolution and formation of perceptions towards persons with disabilities. Zimba (2018) reports that a universal perusal of attitudes towards people with disabilities across cultures suggests that social perceptions and handling of persons with disabilities are neither standardized nor invariable. Literature from the Greek and Roman societies reveal the perceptions towards disability, the disabled and illness. Among the Greeks for instance, the sick were considered inferior and insignificant. Greek philosopher Plato recommended that the deformed offspring be put away from society.

On the contrary, according to Zimba (2018), the early Christian doctrine taught the view that disease is neither a disgrace nor a punishment for sin but, on the contrary, a means of purification and a way of grace. During the 16th century, however, Christians such as Martin Luther and John Calvin indicated that the mentally retarded and other persons with disabilities were possessed by evil spirits. Thus, these men and other religious leaders of the time often subjected people with disabilities to mental and/or physical pain as a means of exorcising the spirits.

By the 19th century, supporters of social Darwinism opposed state aid to the poor and otherwise handicapped. They reasoned that the preservation of the disabled would interfere with the process of natural assortment where the weak may replace the stronger better elements offspring. Some communities banished or ill-treated the blind while others accorded them special privileges. Persons with disabilities were completely rejected by some cultures, while in others they were thrown out as outcasts, yet in some others they were treated as economic liabilities who were grudgingly kept alive by their families. In other settings, persons with disabilities were tolerated and treated in incidental ways, while in other cultures they were given respected status and allowed to participate to the fullest extent of their capability.

Variations in the treatment of persons with disabilities are manifest in Africa as in other parts of the world. Among the Chagga in East Africa, the physically handicapped were perceived as pacifiers of the evil spirits. Hence, care was taken not to harm the physically handicapped. Among the citizens of Benin (formerly Dahomey in West Africa), constables were selected from those with obvious physical handicaps. In some communities in Benin, children born with anomalies were seen as protected by supernatural forces. As such they were accepted in the community because they were believed to bring good luck.

On the hand, according to Eskay and others (2012, pp. 473-484), in Nigeria, for instance, negative perceptions of children with disability are rooted in beliefs. Disability is viewed as (1) curse from God for perceived gross disobedience to God's commandments (2) ancestral violations of social norms such as due to stealing (3) offences against the gods of the land

such as fighting (4) breaking of laws and family sins such as stealing and denying and (5) misfortunes as in the case of incest (6) witches and wizards (7) adultery (which is considered to be a major abomination) (8) warning from the gods of the land due to supposed pollution of water and the land (9) arguing and fighting with the elders which is considered a taboo (10) misdeed in previous life such as stealing (11) illegal or unapproved marriage by the societal elders (essentially arguing and fighting against the elders in marriage) (12) possession by evil spirits (due to gross societal disobedience) and others. According to Rattray (1952), in Ghana, among the Ashanti, children born with disabilities are rejected, often killed at birth. When born with severe disability, such children are categorized as “animal-like” and are left by the riverbanks or near the sea with the belief that they have to get back to their own kind. In the Ashanti culture, people with disabilities are precluded from becoming chiefs. Nangwesho (2015) states that a chief who acquires a debilitating illness such as epilepsy be dethroned. In some communities in Kenya and Zimbabwe, a child with a disability was considered to symbolize a curse that befell her family. Such a child was considered a “shame” to the whole family.

### III. PERCEPTIONS TOWARDS DISABILITY IN ZAMBIA

Zambia’s Fifth National Development Plan (FNDP) reports that people with disability in Zambia are numerous throughout the country, and occur at all levels of society. According to the *World Record on Disability*, Zambia’s disabled population stands at about 1 – 2 million. The current situation in Zambia does not provide a context within which disability rights and the socio-economic entitlements of PWDs are likely to be paid much attention.

Parsons, Bond and Nixon (2015) state that people with disability in Zambia equally face numerous negative perceptions including social stigma. According to Mung’omba (2008, pp. 142-144), PWDs in Zambia are at times thought to be the victims of witchcraft by others. In some instances, PWDs have been victims of abuse and discrimination. Some, because of their disability, have been refused employment while some in employment have suffered segregation with regards to assignments they can competently undertake on the basis of , while others have lost employment on the basis of their disability.

Zimba (2018) states that people with disabilities in Zambia are among the worst affected by negative socio-economic conditions and thus face stigmatization and social exclusion. They also face physical barriers to mobility and access to public buildings; and the more complex impediments to their enjoying essential services such as education and health care, which in turn affect their chance of finding jobs.

In most societies in Zambia, PWDs are considered a curse and a burden, and thus are at times left to fend for themselves. Furthermore, in most communities, the disabled are a source of distress and fear for little children so much that the children literary run away from them. One of the authors (A. S. Silungwe) lived in a community with a PWD who was crippled in the legs and used crutches to walk. The sight of the gentleman was a source of terror causing her to bolt and hide everytime she encountered him. It was her belief and so was the case with most children in the community that the disabled were beings who would harm little children.

With those kinds of perceptions, even as children grow into adults from communities within Zambia, the fear invoked by the presence of a PWD remains inately tucked in deep inside one’s sub-conscious mind and those fears inform behavior in later years. From observation, it is clear within the communities in Zambia that the thought of having a disabled baby is a source of tremendous distress for expecting mothers. The fear is not only for the perceived misfortune of having a physically disabled child, but also an albino. Some who have had babies born disabled or without skin pigmentation (albino) have resented their children, and have left them abandoned to be cared for by other relatives. It is generally considered a curse to have a disabled baby.

### IV. PERCEPTIONS AND DISCRIMINATION AGAINST PWDs

Fiasorgbor and Ayagiwire (2015, pp. 177-182) state that the beliefs and perceptions that society has towards PWDs inform the manner in which this demographic is treated generally within their communities. If the attitudes towards PWDs are negative, numerous challenges ensue. Negative perceptions can lead to abuse and discrimination. There is need to institutionalise the protection of the disabled through the legal system of a particular land. The example of Tanzania’s albino community and how they have been treated is concerning. Tanzania is thought to have the largest population of albinos in Africa. The *Advocacy Report* (2010) reports on Tanzania have it that one in every 1429 births were albino, a much higher rate than in any other nation that led to an estimated population of about 6977 officially registered albinos with up to 17000 undocumented. Most albinos have remained undocumented for fear of persecution and even death.

According to Fiasorgbor and Ayagiwire, albinos have suffered persecution in the towns of Shinyanga and Mwanza, where witch doctors have promoted a belief in the potential magical and superstitious properties of albinos' body parts. Albino children are also believed to be ghosts of European colonists. An albino child is often seen as a bad omen and treated as unwanted. Many albino babies become victims of infanticide due to these superstitious views. Albinos are not the only ones who suffer persecution in Tanzania. Husbands of mothers of albino children are often suspected of infidelity involving white males. These mothers suffer beatings and abuse.

In the same vein, the opposite is true. For instance, the customs of the Chagga people of East Africa prescribe that the physically disabled be treated with utmost respect, as they are perceived to be pacifiers of the evil spirits. Hence, care was taken not to harm physically handicapped children. Positive attitudes generate the enabling environment for people with disability to feel that they belong and they are accepted. Among the Ashantis of Ghana for instance, traditional beliefs precluded men with physical defects, such as amputations from becoming chiefs. In the event that a chief became deformed, they had to be dethroned immediately. Children with obvious deformities were also rejected. For instance, an infant born with six fingers was killed upon birth.

The challenges of discrimination and abuse, however, stemming from negative perceptions towards the disabled raise worry and concern universally and in Zambia in particular. The protection of PWDs is essential in the sense that some PWDs are physically hand to the point that they do not have the ability to protect themselves in some instances. The protection of citizens is enshrined in the nature and processes related to a country's legal system. By definition, according to the *Trans-Legal* dictionary, a legal system is a broad system of rules that governs and regulates decision-making, agreements and laws.

## V. PROTECTION OF PWDs AND THE LEGAL FRAMEWORK IN ZAMBIA

Zambia's legal framework for the promotion and protection of disability rights is mostly governed by the laws passed by Parliament and legal precedencies set by national courts. The legal framework for disability rights in Zambia is primarily anchored on *The Zambian Constitution* (herein after referred to as *The Constitution*), which though not having express provisions regarding the promotion and protection of disability rights in its Bill of Rights, remains the premise for disability rights protection.

The Constitution provides for a firm foundation for non-discrimination, not only to persons living with disabilities, but to any person within the Republic that is prone to such treatment. In Article 8(d) under Part II and Article 23 of *The Constitution* prohibits non-discrimination. Besides *The Constitution*, there are two main statutes that govern disability rights in Zambia, according to Kalaluka (2001, pp. 165-189). These are the *Persons with Disabilities Act* and the *Mental Disorders Act*. Discrimination is defined in Section 2 of *The Persons with Disabilities Act* as:

"...any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, and includes all forms of discrimination, such as denial of reasonable accommodation, and the term 'discrimination on the basis of disability' shall be construed accordingly..."

The above-cited provision is illustrative and authoritative insofar as discrimination of the disabled is concerned and is inclusive of the use of derogatory names. Even though *The Constitution* does not out rightly stipulate the discrimination of a disabled person, but the High Court in *Brotherton NO v Electoral Commission of Zambia* found that persons with disabilities were discriminated against even though the Bill of Rights did not list disability as one of the prohibited grounds of discrimination.

It can be stated that although the Zambian legal framework does not spell out clearly the protection of the disabled against discrimination, the precedence by the High Court in the case cited provides the needed protection. In the case of Kenya for instance, the decision by a High Court Judge in the case of *Duncan Otieno Waga v Attorney General* stated that on account of no express provisions in the previous Kenyan constitution that the act of discrimination had not been established.

Before the enactment of the *Mental Health Act* No. 6 of 2019, the *Mental Disorders Act* stood as the key legal provision for the care and support of PWDs. The *Mental Disorders Act* described the mentally disabled individuals as suffering

from “mental disorders or defects”. The *Act* did not do much to enhance the rights of PWDs as it referred to persons with mental disabilities in derogatory terms such as “idiots” and “imbeciles”. The *Act* did not recognise the legal capacity of persons with intellectual or psychosocial disabilities. It considered them incapable of managing their own affairs, instead provided for the administration of their estates and recommended their institutionalisation.

Most work places in Zambia, furthermore, have safeguarded the right for anyone seeking employment to be treated equally notwithstanding their physical, mental or psychological status, according to Section 108 of the *Industrial Relations Act* Cap 269 of the Laws of Zambia. The provisions of *The Workers Compensation Act* in Section 80 show a consideration for one who has been disabled permanently and is under the age of 21 during the course of discharging his or her duties. The section provides that the individual shall be paid the earnings covering a 3 year period had he worked either under apprenticeship or learnership basis. This in one way is proof of the assurance by the legal system in Zambia for the promotion of non-discrimination towards PWDs, especially in instances of disability acquired in the process of one discharging their duties.

The fight against discrimination for the disabled requires resiliently and consistently instituting sanctions that must outrightly deter discriminatory behaviour. Sanctions provide a platform for robust adjudication of matters relating to the discrimination of PWDs. An example can be cited of instances where the Zambian Judiciary adjudicated over matters relating to the discrimination of PWDs in Zambia, and this is the case of *Sela Brotherton (Suing as Secretary of the Zambia Federation of Disability Organisations) v Electoral Commission of Zambia*.

Facts of the case were that the respondent’s alleged failure to initiate legislative reform to ensure equitable participation by PWDs in the electoral process of Zambia. It was further alleged that the services offered by the respondent at the registration and polling stations in selected constituencies in Zambia are not accessible to PWDs. The High Court held that:-

“Although the braille template has been introduced in respect of the elections for the presidency, there was no public awareness campaign carried out for purposes of sensitizing the users of such templates and the electorate in general. Thus the respondent limited the petitioner's rights and those of other disabled persons to exercise their franchise by way of secret ballot.”

## VI. CONCLUSION

At the moment, the case of *Sela Brotherton (Suing as Secretary of the Zambia Federation of Disability Organisations) v Electoral Commission of Zambia* stands as the sole adjudicated precedence on discrimination against PWDs in Zambia. An isolated case such as this one does not do much to begin to correct the perceptions and attitudes towards matters related to the discrimination of PWDs in Zambia. The authors’ proposition is that the Zambian Legislature has yet to review the law pertaining to PWDs and disability protection against discrimination and abuse. Currently, the legal framework in Zambia only protects the disabled against discrimination partially, and that partiality is on the basis of the constitutional provisions indirectly linked to disability. The courts to this extent must be largely commended for the timely interpretation of the term “discrimination” under the Bill of Rights for which would have remained toothless as illustrated in the Kenyan case cited.

Furthermore, due to high prevalence of poverty in Africa, Zambia inclusive, most potentially beneficial litigation cases against abuse of the rights of PWDs rights do not see the light of day. Zambia exists within the category of low to middle income country bracket, characterised by extensive poverty, general unemployment and poor physical infrastructure. According to DeNavas and Proctor (2015), disability and poverty are intricately interlinked that the problem of disability cannot be adequately addressed without dealing with the problem of poverty. Not only litigation but the voice of millions of disabled is hushed by the louder noise of poverty prevailing in the country.

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